U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN C. STOUFFER, JR. and U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Akron, OH

Docket No. 01-61; Submitted on the Record;
Issued November 27, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issues are: (1) whether appellant was disabled from work for the period December 15, 1999 to January 3, 2000; and (2) whether appellant's alleged back injury and subsequent chiropractic treatment should be authorized and accepted for payment.

On November 10, 1999 appellant, then a 48-year-old automation clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that, on November 10, 1999, he sustained a badly bruised right mid femur when he tripped over scattered carts on the ramp.

Appellant submitted a summary by Dr. Richard Gradisek, who is Board-certified in emergency medicine, of treatment at Akron General Medical center on November 10, 1999. He noted that x-rays of appellant's right femur, knee and tibula/fibula showed no fracture or bony changes, but there did appear to be a contusion of the right femur, which he concluded was secondary to appellant's fall.

By letters dated December 4 and 22, 1999, the employing establishment controverted appellant's claim in so far as appellant claimed continuation of pay and entitlement to chiropractic benefits.

On December 9, 1999 the Office of Workers' Compensation Programs accepted appellant's claim for a right thigh contusion.

Appellant also submitted treatment notes by Dr. Kenneth Parker, a chiropractor, dated November 17 to December 10, 1999, wherein Dr. Parker indicated that he treated appellant for bilateral lower back pain and bilateral hip pain. In order to address subluxations that have been identified through examination, activator adjustments were performed. Dr. Parker also treated appellant with mechanical traction, soft tissue mobilization to the lumbar spine and specific adjustment of the spine to correct malalignments and restore normal mobility.

Appellant submitted a December 13, 1999 medical report in which Dr. Parker noted:

> "In my professional opinion, the MAJOR & SUBSTANTIAL reason for the injury is described: The patient reported that a full runaway mail cart struck him in the right leg. While this injury is described as a leg injury, with a trauma of this magnitude it is apparent that the jarring to the spine as a result of this impact caused injury to the lumbar spine also. As you know, [appellant] has had previous injury to this leg but he had reached [maximum medical impairment] and was working a normal workload and able to perform normal daily activities prior to this injury."

In addition, appellant submitted an unsigned radiographic report wherein Dr. Parker noted, *inter alia*, a "malposition consistent with a subluxation complex was noted at the following levels: C2, C3, C4, C5, T5, T10, T11, T12, L1, L2, L3, L4 and L5." In addition to Dr. Parker, Dr. Robert S. Henderson also gave appellant chiropractic treatments.

In medical reports dated December 6 and 8, 1999, Dr. Phillip Lewandowski stated that appellant could return to work as of December 13, 1999, with restrictions of elevating his leg and utilizing an ice pack. Appellant returned to his job on December 13, 1999 where he sat and sorted mail.

In a letter to the Office dated December 27, 1999, the employing establishment noted that appellant returned to work on December 13, 1999 in a limited-duty position, that on December 14, 1999 appellant was asked to move to the end of the aisle so other employees would not have to step around him and that rather than move, he left work.

In a decision dated January 26, 2000, the Office denied appellant's claim for continuation of pay and/or compensation for time off work from December 15, 1999 through January 3, 2000 and also denied chiropractic treatment, finding that the evidence of record failed to support disability from work for the period indicated or that the claimant sustained any back injury at work on November 10, 1999.

By letter dated February 7, 2000, appellant requested a hearing.

At the hearing held on June 27, 2000 appellant testified as to the circumstances of his accident of November 10, 1999. He noted that he returned to work on December 13, 2000, that he was given the same work as he had before, that he was not provided with ice packs and that he could not keep his leg horizontal. Appellant stated that he stopped work on December 15, 1999, because he could not take the pain anymore. Appellant stated that his medication made him hot, that initially upon his return to work he was under a air conditioner vent, but that, after he had been working two days, they wanted to move him to the end of the aisle and that would have taken him out of the air conditioning. He said that he wanted a job like a certain person who was answering telephones. When the employing establishment refused, he left and went home. Appellant also noted that his back hurt, but that he was not claiming any back condition. He stated that he went to the chiropractor's office because his wife worked there and that the chiropractor did help. However, he stated that he was not pursuing payment for these chiropractic services.

The employing establishment responded to the oral hearing transcript by letter dated July 24, 2000, wherein it noted that appellant was to be moved to one end of the main aisle for his safety and for the safety of other employees in the unit. It was also explained that the new station would allow him not to have to walk the length of the aisle or have his crutches impose a hazard to others. It was explained that at no time did appellant complain that he was not being accommodated according to his restrictions. The employing establishment also submitted results of its investigation of appellant, which included results from a videotape showing appellant, *inter alia,* visiting a gas station, driving his van and sitting for an extended period of time at a hair cut salon.

In a decision dated August 23, 2000, the hearing representative affirmed the Office's decision of January 26, 2000. The Office specifically denied appellant continuation of pay/compensation for the period December 15, 1999 to January 3, 2000 and also denied appellant any benefits for a back condition and the chiropractic treatments.

The Board finds that the Office correctly denied appellant continuation of pay/compensation for the period from December 15, 1999 to January 3, 2000.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[1]

In the instant case, appellant's restrictions were for him to elevate his leg and to use ice packs. On December 14, 1999 appellant was moved to the end of an aisle and he objected. Appellant contended that he had been sitting under an air conditioning vent and that the new position would move him away from the vent. He also asked the employing establishment for a different job, like another worker who was answering phones. When the employing establishment declined appellant's request, he went home. Review of the medical record does not show any contemporaneous evidence which demonstrates that appellant could not perform the assigned limited-duty position. The medical evidence failed to establish a change in the nature and extent of the light-duty work, with the exception of appellant moving his station and there is no medical opinion indicating that appellant need be under an air conditioning vent. Nor is there a medical opinion showing that appellant's condition materially worsened in such a way that he was unable to continue working his limited-duty job. Accordingly, the Office properly found that appellant failed to establish that he could not perform the limited-duty position at which he was working December 13 to 15, 1999.

The Board also finds that the Office properly denied payment for medical expenses for treatment for appellant's alleged back condition.

[1] *Mary A. Wright,* 48 ECAB 240 (1996); *Terry R. Hedman,* 38 ECAB 222, 227 (1986).

In order to be entitled to reimbursement of medical expenses by the Office, appellant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation in a case such as this must include supporting rationalized medical evidence.[2]

Appellant has failed to establish that he sustained a back condition with subsequent chiropractic treatment due to the approved work injury of November 10, 1999. Specifically, there is no well-rationalized opinion explaining how appellant's injury caused a back problem and the necessity for these chiropractic treatments. The Board also notes that at the hearing appellant noted that he was not pursuing compensation for his back condition or chiropractic bills.

The August 23 and January 26, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
November 27, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[2] *William C. Thomas*, 45 ECAB 591 (1994); *Delores May Pearson*, 34 ECAB 995 (1983).